THE HONOURABLE SRI JUSTICE D.S.R.VARMA
AND
THE HONOURABLE SRI JUSTICE K.C.BHANU

WRIT PETITION No.24638 OF 2007

Dated: 23.11.2007

Between:

R.K.Prasad
…Petitioner

And

The Postmaster General, Vijayawada Region,
Vijayawada and three others.

…Respondents

THE HONOURABLE SRI JUSTICE D.S.R.VARMA
AND
THE HONOURABLE SRI JUSTICE K.C.BHANU

WRIT PETITION No.24638 of 2007

ORAL ORDER: **(per the HON'BLE SRI JUSTICE D.S.R.VARMA)**

Heard the learned counsel appearing for the petitioner as well as the Assistant Solicitor General of India, appearing for the respondents.

2. The order, dated 08.06.2005, passed by the Central Administrative Tribunal, Hyderabad Bench at Hyderabad (for brevity "the Tribunal"), dismissing the application O.A.No.1439 of 2002, filed by the petitioner, is under challenge in the present writ petition.

3. It appears that the petitioner, while he was working as

Branch Post Master, Isukapalle, was charge sheeted for certain irregularities and an enquiry was conducted, after following due procedure.

4. The case of the petitioner, in brief, is that, during the course of enquiry, several irregularities have been committed. However, the finality of the said enquiry was; out of the two charges framed against the petitioner, Charge No.1 was held to be proved and Charge No.2 was held to be not proved by the Enquiry Officer. When the report was placed before the disciplinary authority, an independent decision had been taken by him that Charge No.2 was also proved and, accordingly, punishment of removal from service was awarded. The said order of removal was challenged before the appellate authority-the respondent No.2, who, confirmed the order of the disciplinary authority. The said order of the respondent No.2 had been challenged before the Central Administrative Tribunal, Hyderabad.

5. The Tribunal, having gone into the merits of the case, in detail, rejected the contention of the petitioner that various irregularities took place during the course of enquiry, and confirmed the order of the disciplinary authority and the appellate authority. Aggrieved by the same, the present writ petition has been filed.

6. The main and only contention of the learned counsel appearing for the petitioner is that several irregularities were committed during the course of enquiry, and the prime irregularity being the non-examination of the crucial witness.

7. It is to be seen from the impugned order as well as the other material placed before this Court that the department had examined as many as four witnesses and marked several documents also.

8. The charges framed against the petitioner are; (1). non-accounting of monthly instalments received from the depositors and (2). receiving 13 instalments as against the maximum limit of 11 instalments, which were, of course, accounted for.

9. Though the disciplinary authority agreed with the findings of the enquiry officer that the charge No.1 was held to be proved, however, disagreed with the enquiry officer's view that the charge No.2 was not proved and, held, independently, that the charge No.2 was also proved.

10. It is settled law that the disciplinary authority need not necessarily concur with the findings of the enquiry officer and it can arrive at a different conclusion, independently, basing on the record.

11. In the instant case, as already pointed out, so far as the findings of the enquiry officer as regards the charge No.1 is concerned, the same was confirmed by the disciplinary authority and the charge No.2, however, was also held to be proved, though the enquiry officer held that the charge No.2 was not proved.

12. As regards the contention of learned counsel appearing for the petitioner that one Ravi, who is a crucial witness, in this regard, was not examined, it is to be seen that it is the discretion of the department whether to examine any witness or not. We could see from the findings recorded by the Tribunal that it is only at the instance of the petitioner, to reduce the longevity of the litigation, the department had dropped the examination of the said witness by name Ravi. Therefore, for that the respondents herein cannot be found fault with.

13. Furthermore, as regards the charge No.1, there is actual admission by the delinquent officer (the petitioner) himself and the said charge is very serious in nature, inasmuch as, he received the amounts from the depositors, but has not credited the same into their P.O., accounts.

14. As a matter of fact, this Court, while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, cannot delve into the merits of the case, any further, as the

merits of the case have already been considered at three stages i.e., by the Enquiry Officer, the Disciplinary authority and by the adjudicatory authority i.e., the Tribunal.

15. This Court cannot go any further into the merits of the case, as sought for by the learned counsel appearing for the petitioner, and, accordingly, we have no other option, except to dismiss the writ petition.

16. In the result, the writ petition is dismissed, at the stage of admission. However, there shall be no order as to costs.

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JUSTICE D.S.R.VARMA

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JUSTICE K.C.BHANU

23RD NOVEMBER 2007

DR